

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA and)	
THE STATE OF WISCONSIN,)	
)	
Plaintiffs,)	Civil Action No. 10-C-910
)	
v.)	Hon. William C. Griesbach
)	
NCR CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**PLAINTIFFS' JOINT MOTION TO ENTER CONSENT DECREE WITH BROWN
COUNTY, THE CITY OF GREEN BAY, AND SETTLING FEDERAL AGENCIES**

The United States and the State of Wisconsin hereby move the Court to approve and enter a pending proposed Consent Decree that was lodged with the Court on December 1, 2010 (Dkt. 31-1). That Consent Decree would resolve two categories of potential liability for the Lower Fox River and Green Bay Superfund Site: (1) the alleged liability of Brown County, the City of Green Bay, and the U.S. Government (on behalf of the U.S. Army Corps of Engineers) for dredging-related activities and other steps to facilitate navigation in the Lower Fox River and Green Bay; and (2) the alleged liability of agencies of the U.S. Government for activities relating to the recycling of PCB-containing paper by mills in the Fox River Valley. The settlers would pay a total of \$5.2 million under the proposed Consent Decree, and that payment would reduce the liability of the other potentially responsible parties by the amount of the settlement, as provided by 42 U.S.C. § 9613(f)(2). Of that total amount, the United States would pay \$4.5 million and the City and the County would pay \$350,000 each. One portion of the settlement would defray response costs (\$850,000) while a second portion would reduce the claim for natural resource damages (\$4,350,000).

After the proposed Consent Decree was lodged with the Court, notice of the proposed settlement with a solicitation of public comments was published in the Federal Register. 75 Fed. Reg. 76,025 (Dec. 7, 2010). At the request of several defendants in this case, the original 30-day comment period was extended by an additional six weeks until February 25, 2011. Before the close of the comment period, the U.S. Department of Justice provided those defendants electronic copies of more than 48,000 pages of documents concerning Army Corps activities at the Site and federal recycling, in response to Freedom of Information Act requests they submitted in December 2010. Seven sets of comments were received, including comments from: (1) Appleton Papers Inc. and NCR Corporation; (2) P.H. Glatfelter Company; (3) Menasha Corporation; (4) U.S. Paper Mills Corp.; (5) CBC Coating, Inc.; (6) WTM I Company; and (7) the Neenah-Menasha Sewerage Commission. All of them oppose the settlement, arguing that the settlement is procedurally unfair, substantively unfair, and/or unreasonable. The written comments – and the more significant attachments to those comments – are attached as exhibits to this Motion.

The Plaintiffs' brief in support of this motion provides pertinent background information, it reviews the legal standards governing court approval of the proposed settlement, it explains the factors that were considered in devising the proposed settlement, and responds to particular issues raised in the written comments on the settlement by the objectors. A related set of settlement calculation worksheets is attached to this motion. As demonstrated in the accompanying brief, the Court should approve and enter the Consent Decree notwithstanding the commenters' objections.

Conclusion

The Court should approve and enter the proposed Consent Decree.

Respectfully submitted,

For the United States of America

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Dated: July 10, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this day, the foregoing Motion was filed electronically with the Clerk of the Court using the Court's Electronic Court Filing System, which sent notification of such filing to the following counsel:

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